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WORKING GROUP ON INDIGENOUS POPULATIONS

FUTURE ROLE OF THE WORKING GROUP

Working paper submitted by Mr. Miguel Alfonso Martínez,
member of the Working Group

1. At its eleventh session, the Working Group recommended that the consideration of its future role should continue at its twelfth session (E/CN.4/Sub.2/1993/29, para. 237). It also requested Mr. Alfonso Martínez "to update and supplement" the relevant note on this question which was prepared by the Chairman-Rapporteur, Mrs. Erica Irene Daes, in 1993 (E/CN.4/Sub.2/AC.4/1993/8) and which was submitted to the Working Group for consideration at its eleventh session. This working paper is being submitted for the Working Group's consideration in accordance with that mandate.

2. The author of this working paper first wishes to pay tribute to the efforts made by the Chairman-Rapporteur in her note. Directly or indirectly, it served as a required reference during the wide-ranging, substantive debate that took place on this important question in the Working Group at its 1993 session.

3. In fact, it may be considered that the basic approaches adopted in the note by the Chairman-Rapporteur are as sound and valid in 1994 as when the Working Group considered the note in 1993. The author of this working paper therefore endorses those approaches.

4. However, despite the clarity and concision of the contents of that note, the summary of the discussion in the Working Group last year (E/CN.4/Sub.2/1993/29, paras. 187-195) and the extensive notes taken on it by the author of this working paper clearly show that there is a need for basic clarifications of some key aspects of the consideration of this question.

5. Much of the obvious confusion that was apparent during that discussion was the result of the wording - glaringly ambiguous, in the view of the author of this working paper - chosen by the World Conference on Human Rights (Vienna, June 1993) to refer to the future role of the Working Group. Further confusion was created - also as a result of the use of vague and therefore rather unfelicitous wording - when the Conference took the praiseworthy initiative of recommending the consideration, in the context of the now proclaimed International Decade of the World's Indigenous People, of "the establishment of a permanent forum for indigenous people in the United Nations system" (author's emphasis).

6. As far as the future work of the Working Group is concerned, the Conference thus recommended in the Vienna Declaration and Programme of Action that the Commission on Human Rights, i.e. the body to which the Sub-Commission is directly subordinate and its Working Group on Indigenous Populations is indirectly subordinate, should "consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people" (author's emphasis) (A/CONF.157/23, part II, para. 29).

7. Three conclusions which are obviously totally mistaken might easily be reached on the basis of the above-mentioned wording. Each one should be analysed separately.

8. The first of these mistaken conclusions is that the Working Group's mandate now has a time-limit and that it must therefore be "renewed" periodically so that the Group may continue to work normally. According to the text adopted at the World Conference, the time for the Commission to "renew" this mandate would be upon completion of the drafting of a United Nations draft declaration on the rights of indigenous people. Thus, on the basis of the wording used by the Conference, it might be concluded that it was recommending that, as soon as the Working Group completed its work on the drafting of the declaration and the declaration was submitted to the Sub-Commission, the Commission on Human Rights had to adopt a specific decision "renewing" its current mandate (with a time-limit, presumably for one year), thus authorizing it to continue its work for as long as the Commission wanted.

9. The logical result of that assumption is obvious: if, for any reason, the Commission did not take a decision to "renew" the Working Group's mandate once the Working Group had completed its work on the drafting of the draft declaration, the Working Group would cease to exist for lack of legal authorization. According to that logic, the same thing would, of course, happen if the Commission decided to "renew" the mandate of the Working Group only for a definite period once the mandate had expired. In other words, on the basis of such an "interpretation" of the Conference's recommendation to the Commission, if, for any reason, it was considered that the Working Group

should not continue to exist, a specific proposal to that effect by one (or more) of the member States of the Commission would not even be necessary to put an end to the functions of the Working Group - an extremely difficult step to justify in the eyes of international public opinion and of national public opinion in many of those countries.

10. In such circumstances, it would be enough for the Commission simply to do nothing, without any of its members having to assume such a great public responsibility in order to terminate the only permanent forum which actually already exists and operates within the United Nations system and to which Member States and indigenous peoples and their organizations are allowed free access and participation (whether or not they have status recognized by the Economic and Social Council). According to this "reading" of the text of the recommendation by the Conference to the Commission, moreover, the future tasks which the Working Group would be authorized to carry out once its mandate had been "renewed" by the Commission (if the Commission did so decide) would be established as part of its "updated" mandate, whose meaning and content it would be up to the Commission to define.

11. The confusion created by the wording chosen by the World Conference on this matter was quite obvious during the discussion in the Working Group last year. In their statements (and in conversations outside the meeting room), some indigenous peoples and organizations, students of such matters and even some Governments assumed that the Working Group's current mandate had to be "renewed" by the Commission in 1994, once it had completed its work on the draft declaration and had submitted it to the Sub-Commission.

12. The misunderstandings and concerns continued to exist, despite the profession of faith about the future of the Working Group which Mrs. Daes, its Chairman-Rapporteur, made so unequivocally when she opened the discussion on the future role of the Working Group last year. She explicitly pointed out that "there was no threat of dissolving the Working Group upon completion of the drafting of the declaration. On the contrary, there were reasons to believe that its role and competence would be strengthened" (E/CN.4/Sub.2/1993/29, para. 187).

13. None the less, a great many indigenous organizations and peoples told the author of this working paper, both in Geneva during the Working Group's 1993 sessions, and, later, in various places, that they were deeply concerned about the possibility that, with this type of initiative by the World Conference, not too subtle attempts were in fact being made to terminate the Working Group or drastically reduce its present functions. In the view of those sources, one reason for such an extreme measure might be various Governments' lack of satisfaction with and concern about the wording the Working Group intended to include in the draft declaration.

14. Such concerns, which, at the time, seemed entirely comprehensible to the author of this working paper, were prompted by two other important developments. In the first place, this was the first time the Working Group had included the question of its future role within the United Nations system as a separate item on its agenda.

15. Secondly, the constant insistence of some sectors active in indigenous matters (mainly, but not exclusively, Governments) that the last stage in the drafting of the declaration in the Working Group should be speeded up as much as possible so that the Group might complete its work in 1993 did nothing to dispel such concerns.

16. It should be borne in mind that it was precisely the completion of its work on the draft declaration that would, according to the recommendation by the World Conference, pave the way for the Commission to begin the process of "renewing" and "updating" the mandate of the Working Group, with all the above-mentioned possible negative consequences that such a step might entail.

17. According to some advocates of the theory that it was absolutely essential for the Working Group to complete its work on the draft declaration and to submit it to the Sub-Commission for approval in 1993, its members had no other alternative than to accept, at whatever cost, the explicit request to that effect made by the member States in the Declaration and Programme of Action of the World Conference (A/CONF.157/23, part II, para. 28).

18. It was also argued, as an additional reason for the "need" to complete that task in 1993, that there was no certainty that the Working Group would be able to have the same members in 1994. The terms of office of two of its members who had made very significant contributions to the drafting of the declaration, particularly its Chairman-Rapporteur, were expiring in early 1994. According to that reasoning, it would have been unfair and inappropriate for the Working Group to adopt the final version of the draft declaration in the absence of those two colleagues.

19. However, many of the participants in the 1993 discussion, including the author of this working paper, did not consider that the Working Group absolutely had to complete its work on the declaration in 1993, particularly in view of the uncertainty about the possible termination of the Working Group by the Commission in 1994 as a result of the confusion created by the wording of the recommendation adopted in Vienna.

20. From the ethical-functional point of view, it was argued that the Working Group's first duty was to be thorough and diligent in its work, to guarantee the quality of the document that would be produced and would be considered first by the Sub-Commission and then by the Commission, the Economic and Social Council and the General Assembly and to make its best efforts to agree on wording that would be acceptable to all parties with an interest in the declaration when those governmental bodies began to discuss it. If it was possible for it to complete its work in 1993, it should naturally do so. If it had to wait some time in order to do so, haste should not be its watchword.

21. From the legal-institutional point of view, it was considered that the request by the World Conference gave way to the more recent decisions adopted by the Commission on this question (resolutions 1993/30 and 1993/31). The basic assumption was that the Commission is the highest specialized body that has dealt with the question from the very beginning of the work of the Working Group on the draft declaration. In those two resolutions, the

Commission, which is obviously much more realistic than the Conference, simply requested the Working Group "to make its best efforts" to complete its work in 1993 (paras. 12 and 6 (a), respectively).

22. According to this logic, it was finally understood that the possible different composition of the Working Group, which had undergone several changes in recent years, especially in 1991 (and was changed slightly later as a result of a decision by one of the regional groups), should not be a decisive factor compared with others referred to above, especially if haste might affect the quality of its work.

23. In any event, the Working Group managed to draft a text, which, with a few important exceptions, was adopted by consensus by its five members in 1993. Agreement was reached in private meetings, after nights and weekends of intensive work, nearly 3 weeks after the 10 working days authorized by the Economic and Social Council for its eleventh session.

24. Despite such efforts, the Sub-Commission was, predictably, unable to begin its consideration of the text of the declaration in 1993. In its resolution 1993/46 of 26 August 1993, it decided to begin considering the text after the Working Group, at its public meetings in 1994, had heard the comments of Governments and indigenous peoples on the draft declaration adopted last year and had reported thereon.

25. Coming back to the basic question of the nature of the Working Group's current mandate, it should be emphasized that there is absolutely no basis in fact, either from the point of view of the parliamentary practice followed in this regard or from a purely legal-institutional standpoint, for the theory that, as soon as the Working Group submits its final version of the draft declaration to the Sub-Commission, presumably in August 1994, the Commission has to "renew" that mandate, i.e. presumably within only a few months, at its fifty-first session.

26. With regard to parliamentary practice, it is obvious that, from the time of its establishment in 1982, the Working Group has held its meetings annually, except in 1986, because of the United Nations "financial crisis", with no need for the Commission to adopt an explicit formal decision "renewing" its mandate. At one point, the Commission started routinely adopting a resolution each year on the work of the Working Group during the past year and, in one of its paragraphs, it requests the Economic and Social Council to authorize the Group to meet for more time than originally scheduled (five working days) in the Council resolution deciding on its establishment.

27. With good legal technique, the Commission itself has so far taken it for granted that the Working Group's mandate is permanent (not limited in time). It has rightly considered that the Working Group is an ad hoc body, i.e. a body whose existence depends primarily on its not having completed the mandate for which it was established and, of course, on not having been dissolved by an explicit decision to that effect.

28. It is obvious that, so far, no decision to dissolve the Working Group has been taken by any competent body. Moreover, a quick look at the decision by which the Economic and Social Council established the Working Group

(resolution 1982/34 of 7 May 1982) shows that its mandate has not expired. In this connection, it should be pointed out that it is in every respect obvious that, in many countries, "developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations" continue to take place and will continue to do so in the foreseeable future. These are the developments that the Working Group is to consider in accordance with the mandate entrusted to it by paragraph 1 of the above-mentioned resolution, in which the Council also authorizes the Sub-Commission to establish the Working Group "annually", but neither that paragraph nor any other part of the resolution sets a time-limit by which the Sub-Commission would be required to refrain from establishing it regularly.

29. In point of fact, the Sub-Commission, like the Commission, has considered and continues to consider the Working Group as a permanent subsidiary body for whose continuity it does not have to take annual decisions expressly recommending that higher bodies (the Commission and the Council) should authorize it to establish the Working Group the following year.

30. In view of the foregoing, there is no doubt that, as soon as the Working Group completes its task of drafting the United Nations draft declaration on the rights of indigenous peoples, there will be no need for the Commission on Human Rights (or any other United Nations body) to "renew" its mandate periodically so that it can continue normally with its annual rhythm of activities.

31. In other words, even if it is agreed arguendo (and more will be said of this below) that the Commission is indeed empowered to take final decisions to "renew" the Working Group's mandate, there is no likelihood of it disappearing as a United Nations body if the Commission should fail to take a specific decision - in 1994 or later - "renewing" its mandate and authorizing it to continue in existence as a subsidiary body of the Sub-Commission.

32. As has so far been the case, the fact that the Working Group's mandate has not yet expired, as noted above, and its status as a permanent (ad hoc) body of the United Nations system mean that any possible future inertia by higher bodies (the Commission and the Council) as to the "renewal" of its current mandate cannot lead to its termination. In order for it to be terminated, the relevant body within the system must, on the initiative of one or more of its member States, adopt a specific decision putting an end to its functions.

33. The second area of confusion which was apparent in the Working Group's discussion of this question in 1993 and which was created by the wording used by the World Conference relates to the actual authority of the Commission on Human Rights over any aspect of the Group's mandate. The text of the recommendation adopted in Vienna gives the mistaken impression that the Commission may, by itself and on its own authority, not only "renew", but also "update", the Working Group's mandate.

34. As far as this point is concerned, the hierarchical structure of the United Nations is inescapable. As already mentioned, the Working Group was established by the Economic and Social Council, one of the principal organs of the United Nations, of which the Commission on Human Rights is a functional

commission, i.e. a subsidiary body (with the same status as the Sub-Commission in respect of the Commission and the Working Group in respect of the Sub-Commission). Logically, it was also the Council which defined the Working Group's original mandate by authorizing the Sub-Commission to establish it annually. Accordingly, the Council alone is authorized to decide, in the final analysis, on any matter relating to the original mandate it gave the Working Group in 1982; this of course includes any "updating" which the Group might require. In this regard, the Commission may only make recommendations to the Council, which may accept or reject them, as it is the final authority in the matter.

35. Some consideration, however brief, should be given to the question of the possible need formally to "update" the Working Group's mandate and, in particular, to whether the purpose of such wording is to bring about the revision of the original mandate given to the Group by the Council in 1982 and the elimination of one of the two basic functions which were then entrusted to it and have served as a satisfactory legal basis for the considerable progress it has made in promoting and protecting the rights of indigenous peoples since it was established in 1982.

36. It should be emphasized at the outset that the author of this paper considers it neither necessary nor useful, for the purposes for which the Working Group was established, to advocate the formal "revision" of its mandate.

37. This opinion is based primarily on the current uncertainty about the existence of the Working Group in the present circumstances, i.e. following the above-mentioned recommendations by the Vienna World Conference. Anything that, in practice, involves a formal revision of the Working Group's functions would pave the way for further uncertainty and the outcome would be impossible to predict at present.

38. This reasoning is all the more logical if it is borne in mind that the process of "updating" its functions will necessarily take place in (governmental) bodies of the United Nations in which proper participation by indigenous organizations and peoples is not yet guaranteed.

39. In the light of the Working Group's first 12 years of activity, it may also be asked whether the mandate under which it now operates has been contrary to the aims for which it was established (as described in the preamble to resolution 1983/34 by which the Council established it) or whether this mandate has been an obstacle which has prevented or will prevent the Group itself or higher bodies (governmental or non-governmental) from dealing with changing situations and new challenges in this regard.

40. There is obviously still a long way to go in order to deal successfully with the serious and pressing plight (in the words of the preamble) of indigenous peoples. Nevertheless, everything seems to suggest that, on the basis of its current original functions, the Group has been able to make significant progress, at least in five key areas, namely, (1) setting relevant international standards through the draft declaration; (2) promoting greater understanding of the scale and seriousness of the problems which indigenous peoples currently face, both by public opinion (national, in many countries,

and international) and by many national authorities involved in indigenous matters; (3) identifying such problems and their many facets (matters relating to cultural rights for example) and exploring possible tangible solutions; (4) providing a permanent forum for the free exchange of opinions between Governments and indigenous peoples on issues on which both parties are not only opposed, but also share common interests; and (5) offering a permanent annual framework in which indigenous organizations and people can meet, exchange experiences and, possibly, coordinate their positions.

41. Moreover, the broad terms in which the Economic and Social Council defined the Working Group's two basic functions in its original mandate (see para. 28 above and para. 43 below) offer a very wide "conceptual umbrella". It naturally covers most if not all of the aspects of this issue which are still - as in 1982 - of vital priority concern to indigenous peoples.

42. It should not be forgotten that this wide "umbrella" gives the Group's activities the necessary flexibility. The original mandate has enabled the Sub-Commission, the Commission and even the General Assembly, without any need to "update it" formally, to make recommendations on new tasks to be carried out by the Working Group in response to new situations. The most recent example is the task entrusted to it for the current session in connection with the recent proclamation by the General Assembly of the International Decade of the World's Indigenous People.

43. The third significant area of confusion in the 1993 discussion relates to the substance of the role the Council assigned to the Working Group in its original mandate in connection with the "special attention [the Group shall give] to the evolution of standards concerning the rights of indigenous populations" (para. 2). The wording adopted by the World Conference seems intended to suggest that, when the Group completes its version of the draft declaration, this essential part of its mandate will definitively have come to an end.

44. Clearly, this is far from being true, as already pointed out with the usual clarity in the above-mentioned 1993 note by the Chairman-Rapporteur on the future role of the Working Group (E/CN.4/Sub.2/AC.4/1993/8). After emphasizing (para. 6) that the Working Group has so far concentrated its efforts on elaborating a draft declaration, she draws attention to other questions that the Group still has to take up under the second part of its mandate, including those relating to the draft declaration itself, once its initial drafting has been completed. In paragraph 11 (g) of the same document, Mrs. Daes mentions some other specific tasks that the Group could undertake to promote the gradual evolution of international standards relating to the rights of indigenous peoples.

45. For three reasons to which he attaches great importance, the author of this paper considers it essential to pay enough attention to trying to clean up the above-mentioned confusion that arose in 1993 over the future role of the Working Group.

46. The first is the Working Group's educational function, which is, in his view, one of its most important unwritten tasks. We all take part in it in order, inter alia, to begin or round out our education on general topics and

specific issues in respect of which our understanding is always bound to be incomplete, since indigenous issues are so broad in scope and so complex, as is well known. In the author's view, this is particularly true of the members of the Working Group, regardless of how long they have been involved in these activities and also, although perhaps to a lesser extent, of Government observer delegations, many of which frequently change their representatives to the Group's sessions. In addition, it is always valuable for indigenous peoples and their organizations to familiarize themselves thoroughly with the far from simple institutional and procedural ins and outs of the United Nations system.

47. The second reason is that the Group is supposed to discuss its possible future role again this year and it is absolutely essential to ensure that the same confusion that was apparent in the 1993 debate does not arise again in 1994. This is all the more necessary at the Working Group's current session in order to save as much time as possible.

48. It must therefore be borne in mind that, as is known, after several years of authorizing the Working Group to meet for 10 working days, at its 1994 session the Commission did not consider it necessary to recommend to the Council that this practice should be continued (resolution 1994/29, dated 4 March 1994, para. 6 (a)). As a result, this year, the Working Group will only have five days (i.e. half the time available in 1993) to deal with the heaviest programme of work in its history; this is on account of the specific new tasks recently assigned to it, in the framework of its current mandate by the Commission in resolutions 1994/26 (paras. 5 and 15) and 1994/28 (para. 2) dated 4 March 1994, at the request of the General Assembly (resolution 48/163 dated 21 December 1993 (paras. 4, 11, 12 and 18).

49. The third reason which led to the lengthy analysis at the beginning of this paper of the uncertainty and confusion in the 1993 debate is by far the most important. In the near future, there is likely to be a fresh danger that the Working Group may disappear or have its current role changed considerably. This is particularly unfortunate as this possibility is a direct consequence of a very significant initiative by the World Conference: the decision to consider "<u>the establishment of a permanent forum for indigenous peoples in the United Nations system</u>" (author's emphasis) (A/CONF.157/24, part I, para. 32). This idea was subsequently taken up (at least formally) by the General Assembly in resolution 48/163 (para. 20) when it requested the Commission to give priority consideration to the "establishment" of such a forum.

50. In the view of the author of this paper, the wording chosen by the Conference to launch this initiative was particularly unfortunate. By using the word "establishment", it seemed to be trying to give the impression that there was no "permanent forum" for indigenous peoples in the United Nations system. However, the authors of that wording could not fail to be aware that, for over a decade, there had already been a permanent body (or forum) in the United Nations system devoted solely and exclusively to analysing questions affecting indigenous peoples. That forum is, precisely, the Working Group on Indigenous Populations.

51. It is in this context that it must be recalled that, as already pointed out above (paras. 6 and 8), the permanent nature of the Group was called into question by the Conference itself when it recommended that the Commission should "consider the renewal ... of (its) mandate" (author's emphasis) upon completion of the drafting of the declaration on the rights of indigenous peoples.

52. The Working Group's status as the "only forum within the United Nations system where indigenous people can raise issues of concern to them" (author's emphasis) was rightly emphasized by the Chairman-Rapporteur in the above-mentioned 1993 note on this topic (E/CN.4/Sub.2/AC.4/1993/8, para. 10).

53. The fact that those responsible for this initiative at the World Conference did not consider it necessary to define, even generically, the essential features of this "permanent forum", i.e. its institutional status within the United Nations system, its possible functions, composition, funding, etc., certainly did not help to dispel the confusion that immediately arose in connection with such a novel idea. That confusion was apparent in the debate that took place in 1993 in the Working Group on its future role. It was reflected, although perhaps not fully, in the Working Group's own report to the Sub-Commission last year (E/CN.4/Sub.2/1993/29, paras. 190 and 191).

54. In trying to clarify this point, the author of this paper sought the views of senior officials of the Centre for Human Rights, of representatives of indigenous organizations and even of persons who, as representatives of their Governments or in other capacities, had taken part in Vienna in drafting the recommendation adopted by the World Conference and he received extremely varied and sometimes contradictory replies.

55. Strangely enough, however, the lack of definition was no obstacle to a burst of unexpected, and quite widespread, enthusiasm for the idea. The fact that the possible establishment of this "permanent forum" and the future role of the Working Group were discussed together for the first time last year in public meetings in the Working Group further complicated the situation. Since then, the possibility that this "permanent forum" should be regarded as a possible alternative to the continuation of the current functions of the Working Group on Indigenous Populations seems to have gained ground, even with some indigenous organizations and peoples.

56. In a recent academic forum which considered various practical and topical aspects of the approach to indigenous matters in the United Nations, a formal reference was made to the need to analyse this possible alternative in the discussions that will take place this year in the Working Group on its future role. In that forum, arguments were also put forward in support of the view that, if the current financial problems of the United Nations or other factors made it difficult to have two permanent bodies on indigenous questions ("a permanent forum" and the Working Group), priority should be given to the establishment of the "permanent forum" which still has to be defined.

57. Such a challenge may not be taken lightly or be left unanswered, particularly in view of the results achieved in the Working Group during its 11 years of activity (see para. 40 above) and the immediate new tasks the

United Nations has before it in this area as a result of the proclamation of the International Decade of the World's Indigenous People and the forthcoming adoption of the draft declaration on the rights of indigenous peoples.

58. In point of fact, it would be unnecessary, and strange, even to consider the idea of possibly replacing the Working Group by a body about which there is as yet no clear idea. However, in view of the possibility that, in the near future, the Commission on Human Rights will take the initiative of making recommendations to the Economic and Social Council about possible changes in the Group's mandate, this question must be analysed. After having listened to the views of its members and of observer delegations of Governments and indigenous peoples, the Working Group must make specific recommendations to the Sub-Commission on this crucial matter. On the basis of these recommendations, the Sub-Commission must in turn inform the next higher body (the Commission) and the Council itself of its views on the matter.

59. The views of the author of this working paper on the issue are perfectly clear. They are based on the assumption that the Vienna World Conference (notwithstanding the vagueness of its recommendations in this regard), the General Assembly and the Commission on Human Rights are of the opinion that there should be two permanent United Nations bodies (and not one, as at present) dealing exclusively with indigenous questions and the author shares that opinion. His views may be summarized as follows:

(a) The Working Group must continue to exist not only until the "permanent forum" in question has been established and its possible institutional status within the United Nations system, as well as its possible functions, membership and sources of funding have been precisely determined but also after this new body has been established and begun to carry out its activities on a regular basis. In other words, the establishment of the "permanent forum" must not be regarded as a possible "alternative" to facilitate the elimination of the Working Group;

(b) The two basic functions which were specifically assigned to the Working Group by the Council when it was established in 1982 and which the Group has satisfactorily performed since that date must continue to be performed in the future, as in the past, by the Group itself and not by other already existing or future bodies within the United Nations system. This line of argument is borne out by the undeniable productive potential which the Working Group has developed as a result of its existence and activities (both for Governments and indigenous peoples) in respect of promoting both "the evolution of standards concerning the rights of indigenous populations" and reviewing "developments pertaining to the promotion and protection of the human rights and fundamental freedoms" of such peoples.

(c) Consequently, other functions will eventually have to be assigned to the "permanent forum" by the Council or by the General Assembly; they will have to be different from the two basic functions currently performed by the Working Group. When the mandate to be given to the "forum" is defined, special care will have to be taken to ensure that the tasks it is required to carry out in no way interfere with the work of the Group in both areas, will not create potential conflicts of jurisdiction between the two bodies and do not foster duplication of their work;

(d) There also has to be a difference between the "general philosophy" on which the two bodies are based and between their composition (membership), legal and institutional status within the United Nations and international influence (outside the United Nations);

(e) The relations that will logically have to exist between the two bodies will primarily be determined by the way in which it is decided to fit the "permanent forum" into the current institutional structure of the United Nations. Obviously, these relations will also depend on the respective mandates of the two bodies, i.e. on the tasks ultimately assigned - on the bases set out above - to the "forum" and on those which the Working Group is required to perform in accordance with its original mandate and others which the Working Group will be performing in the general context of its original functions when the "forum" is set up, but which have a bearing on specific topical issues, such as the Decade or the declaration. In any case, the Working Group will have to pay special attention at its annual sessions to the results of the "permanent forum's" activities;

(f) When two permanent bodies exist as a result of the establishment of the "permanent forum", the appropriate administrative and budgetary measures will have to be adopted to prevent them from "competing" with one another for the already scarce human and financial resources available for activities connected with indigenous issues. The establishment of the "forum" necessarily implies that the competent United Nations bodies, in particular, the Fifth Committee of the General Assembly, will authorize new budget headings for the activities it will have to carry out.

60. Having established this, it is worth emphasizing that the future role of the Working Group will necessarily be determined by its current mandate, as well as by any clarification of it in future as a direct consequence of the new tasks which the competent United Nations bodies have decided to undertake in recent months and, in particular, those deriving from the proclamation of the Decade and the forthcoming adoption of the draft declaration on the rights of indigenous peoples.

61. It has already been stated (see para. 59 (b) above) that the Working Group on Indigenous Populations should continue, as it has been doing to date, to perform the two basic functions the Economic and Social Council entrusted to it when it was set up. It has also been noted (para. 42 above) that the original mandate was broad enough and provided the necessary flexibility to allow the Working Group to carry out new tasks recommended by its hierarchical superiors in the system, without any need for the Economic and Social Council to "update it" formally in an explicit decision adopted for the purpose.

62. With reference to the foregoing, the author of this working paper agrees with many of the suggestions made by the Chairman-Rapporteur in paragraph 11 of her 1993 note on the subject (E/CN.4/Sub.2/AC.4/1993/8). He considers that those mentioned in paragraph 11 (b), (d) and (h) (closely linked), (g) and (j) are particularly relevant and that it would be extremely useful for the Working Group to explore the possibility of its members contributing to the

creation and periodic publication of a United Nations indigenous yearbook, which would be published regularly (two or three issues per year), basically along the lines of the idea of an annual thematic report on indigenous peoples, as outlined by Mrs. Daes in paragraph 11 (a) of her note.

63. In the light of the foregoing, the author of this working paper also has very definite opinions about the tasks to be carried out by the Working Group in future.

64. In addition to the very specific tasks it has already been carrying out on the basis of the two basic functions it has at present and those referred to in the preceding paragraph, there are others which should be formally entrusted to it in the immediate future and also in the short term and which are of obvious importance. They basically relate to the decision adopted a few months ago by the General Assembly to proclaim the International Decade of the World's Indigenous People as from the end of 1994 (resolution 48/163 of 21 December 1993).

65. It should be stressed that the author fully agrees with the view which seems to be expressed in this resolution, namely, that, in the General Assembly's opinion, the Working Group can and should play an important role in various aspects of the International Decade. Paragraphs 4, 11, 12 and 18 of the resolution proclaiming the Decade justify this conclusion. It seems that the Commission itself supports the same position in the light of paragraphs 5, 13, 14 and 15 of its resolution 1994/26 of 4 March 1994. As these two resolutions recommend, the Working Group will consider various aspects of the preparatory phase of the Decade in 1994.

66. For the same reasons, on the basis of its original mandate and since it has been familiar with the topic for more than 10 years, the Working Group should also play an important role, inter alia, in:

(a) The periodic and systematic evaluation of the implementation and results of the activities contained in the plan of action for the Decade;

(b) The analysis at regular intervals of the gradual achievement of the goals and objectives set for the Decade;

(c) The identification of the obstacles to the successful implementation of the activities provided for in the plan of action and the achievement of the goals and objectives of the Decade; and recommendations on the measures it considers necessary to overcome them;

(d) The periodic preparation of specific suggestions on new activities to be included in the plan of action and on the priority or order for implementing the activities already contained in the plan;

(e) Advising the Coordinator for the Decade on all matters on which he may wish to consult it and providing him through the appropriate channels with such recommendations as it may consider it useful for the performance of the coordinating function of the Assistant Secretary-General for Human Rights;

(f) Advising the board of trustees to be appointed to manage the voluntary fund which the Secretary-General will have to set up to carry out the activities of the Decade on all issues it may submit for consideration and submitting to the board, through the appropriate channels, any recommendations which it may wish to propose in connection with its work.

67. As may be seen from the preceding paragraph, the author of this working paper considers that a suitable procedure must be established periodically to evaluate the implementation of the activities of the programme of action for the Decade and the results gradually achieved and to identify the obstacles which have arisen with a view to proposing measures to try to overcome them in time.

68. This procedure will be officially implemented by the Coordinator for the Decade at predetermined intervals (for example, every three years); all United Nations bodies which are concerned with ensuring the success of the Decade - including the General Assembly, of course - should take part step by step.

69. For the reasons given in paragraph 64 above and because it is the basic authority in the hierarchical structure, it would be logical to conclude that the Working Group should be the first step in the required evaluation machinery.

70. With regard to specific new tasks which the Working Group can and should perform in the short-term and medium-term future as a result of new situations arising in this field, the proposal made by the Chairman-Rapporteur last year that, once the United Nations draft declaration on the rights of indigenous peoples has been finally adopted, specific tasks can be entrusted to the Working Group in connection with its actual implementation (E/CN.4/Sub.2/AC.4/1993/8, para. 11 (f)), seems very much to the point. In fact, whatever the specific task performed by the Working Group in this regard, either at the formal request of the Economic and Social Council or on its own initiative, it will have full legal coverage in the context of the two basic functions assigned to it in its original broad and flexible 1982 mandate.

71. One very important contribution which the Working Group could probably make would be to promote the widest possible dissemination of the content of the declaration. An effective means would be to adopt specific recommendations on convening regional or world seminars on the content of the declaration. Particular attention would be paid in such seminars to the most relevant conceptual and practical aspects of the text and their importance for establishing a more stable, fair and harmonious relationship between indigenous peoples and States. The success of such seminars would depend on broad indigenous participation, the unconditional cooperation of member States and close coordination between the Working Group and the advisory services of the Centre for Human Rights.

72. A final comment on the possible future work of the Working Group: the author of this working paper has already publicly expressed the view that the Group should not take on jurisdictional functions, i.e. it should not act as a

body responsible for formally considering complaints - which it regularly hears in its discussions every year - of real or alleged violations of the rights of indigenous peoples in the territories of member States, making value judgements concerning those complaints and making recommendations to member States. He reiterates this view in the context of the present discussion.

73. He has two reasons for his opinion. In the first place, it should be stressed that the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII), the various types of machinery provided for in different international human rights instruments (such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination) and the existence of a large number of rapporteurs and special representatives, independent experts and thematic working groups set up for the same purpose by the Economic and Social Council on the recommendation of the Commission on Human Rights (on torture, arbitrary detention, enforced disappearances, arbitrary executions, etc.) offer quite a bit of machinery for dealing with those situations.

74. Recently, the Commission on Human Rights instructed the existing thematic bodies to take account, in the exercise of their functions, of the situation of indigenous peoples in their respective areas of work. In its resolution 1994/29 (para. 7), the Commission on Human Rights invited the Working Group to take into consideration in its deliberations the work of all those thematic bodies.

75. It can be validly argued that the existing procedures are inadequate. They relate only to situations of violations of the human rights of those peoples or individuals, and not to the rights in general of indigenous peoples, a much broader and more far-reaching concept. The conspicuous lack, in most cases, of suitable national machinery to settle conflicts with full indigenous participation and adequate powers to deal with conflicts arising between those peoples and national authorities is well known.

76. The need to set up an appropriate international forum which will provide the means, on a permanent basis, for a negotiated solution to such conflicts is becoming increasingly apparent. A recommendation along those lines to the Governments of the region was recently adopted at the Latin American and Caribbean Meeting on the International Decade of the World's Indigenous People (Cochabamba, 30 May-1 June 1994) convened by the Government of Bolivia. It might be considered necessary for an international body of this kind also to be empowered to make rulings on such conflicts in the form of legal decisions, awards or enforceable sentences, once local remedies and mechanisms have been exhausted.

77. However, the author of this paper does not consider that the Working Group should become a forum of this kind. For that purpose, such a function would have to be assigned to it as part of its mandate, but such power is neither explicitly nor implicitly included in the mandate originally entrusted to it by the Economic and Social Council in 1982.

78. This would, of course, give rise to predictable conflicting views among Governments in the Commission and in the Economic and Social Council which have to discuss and decide on the broadening of the Working Group's mandate.

If the Working Group and/or the Sub-Commission recommended such an expansion of the terms of reference of the Working Group to those higher bodies, they would be paving the way for totally unforeseeable results in the present situation, whose characteristics have to be borne carefully in mind, since, as seen in the first part of this paper, the threats to existence of the Working Group do not seem to have been removed and the participation of indigenous organizations and peoples in the governmental bodies which would make recommendations and take decisions in this matter has not yet been guaranteed. In other words, to try to turn the Working Group into an indictment chamber would be inappropriate, particularly as the Group has no such power at present. To try to give it such power expressly would, however one looks at it, be completely rash.

79. With regard to other related matters, it was already noted in another part of this paper (para. 59 (d) above) that the powers of the Working Group and of the "permanent forum" to be established in future should not only be clearly differentiated, but the two bodies should also be clearly distinguished from one another in terms of the "philosophies" (or nature) of their work, as well as in terms of their membership, their status in the United Nations institutional framework and their international influence (outside the United Nations). The Working Group should continue to be a deliberative, recommendatory and advisory body without jurisdictional powers (for the reasons analysed above).

80. It is also essential for the Working Group to continue to be a non-governmental forum situated institutionally within the United Nations as a subsidiary body of an organ of the same kind (the Sub-Commission). Moreover, its influence should basically continue to be directed, as has been the case until now, at other bodies within the system and not at targets outside the United Nations.

81. At present, a radically different conclusion may be reached with regard to the present composition (membership) of the Working Group. The experience of 11 years of work seems to indicate, at least for the author of this paper, that it is more and more obvious that the work of the Working Group would benefit greatly if the present (and limited) composition of only five expert members of the Sub-Commission were expanded to include the same number of representatives of indigenous organizations and peoples as full members. Various ways of implementing this proposal adequately would naturally have to be analysed, but the indigenous representatives in the Group could be selected by the Commission (or by the Sub-Commission) on the basis of a list of candidates proposed by the indigenous peoples and organizations themselves, with a four-year term of office as well. Equal indigenous representation - and capacity to make proposals and participate directly in decision-making by the Working Group - would offer obvious advantages for the achievement of the goals set by the Economic and Social Council when it established the Working Group.

82. The presence of such representatives would make a significant international contribution to the materialization of the political will

clearly expressed by consensus by the member States at the World Conference on Human Rights to "ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them" (A/CONF.157/23, part I, para. 20).

83. Lastly, the author of this working paper considers it essential and imperative that, in the light of the discussion which will take place at its twelfth session, the Working Group should make express recommendations to the Sub-Commission on the various matters it has considered and on any other aspects of the topic which may have been omitted here.